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Attorney for Debtor  
ANGELIA GREEN

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA-SAN FRANCISCO DIVISION

In re:

ANGELIA GREEN

Debtor.

) Case No: **15-30454**

) Chapter: **13**

) **PRELIMINARY OPPOSITION TO**  
) **MOTION FOR RELIEF FROM**  
) **AUTOMATIC STAY OR FOR ORDER**  
) **CONFIRMING THAT THE AUTOMATIC**  
) **STAY DOES NOT APPLY UNDER 11**  
) **U.S.C. § 362(1)**

) Hearing Date: May 14, 2015

) Time: 1:00 p.m.

) Location: 235 Pine Street, San Francisco, CA  
) 94104

) Department: 23

**TO THE HONORABLE HANNAH L. BLUMENSTIEL, UNITED STATES  
BANKRUPTCY JUDGE, THE MOVANT, THE CHAPTER 13 TRUSTEE, THEIR  
COUNSEL OF RECORD, IF ANY, AND ALL OTHER PARTIES IN INTEREST:**

Debtor, ANGELIA GREEN, (“Debtor”), respectfully submits the following opposition to  
the Movant’s, DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR  
HARBORVIEW MORTGAGE TRUST 20007-2 (“Movant”), motion for relief from automatic  
stay or order confirming that the automatic stay does not apply under 11 U.S.C. § 362(l).

1           **I.       THE INSTANT MOTION VIOLATES NORTHERN DISTRICT OF**  
2           **CALIFORNIA LOCAL RULE 9014-1 AND SHOULD BE DENIED ON THIS**  
3           **GROUND ALONE**

4           In the instant motion, the Movant failed to comply with the Local Rule 9014-1(c) by  
5           failing to comply with the notice requirements of giving notice of the instant motion. That rule  
6           provides that a party desiring to have a hearing on a motion must give at least 28 days prior to  
7           the hearing be heard. L.R. 9014-1(c)

8           Here, Movant only gave twenty days' notice, and the Debtor has been substantially  
9           prejudiced by this lack of notice as she just retained counsel the day before this hearing was  
10          scheduled to occur. Thus, Debtor requests that this Court deny this motion. As stated in her  
11          counsel's declaration, Debtor could have provided a more comprehensive opposition if she had  
12          more time to do.

13  
14           **II.       MOVANT IS NOT ENTITLED TO RELIEF FROM THE AUTOMATIC STAY**  
15           **BECAUSE THEY HAVE NOT PRESENTED ADMISSIBLE EVIDENCE**  
16           **THAT THE FORECLOSURE SALE GIVING RISE TO THEIR CLAIM TO**  
17           **TITLE AND POSSESSION WAS CONDUCTED PRIOR TO THE DEBTOR**  
18           **FILING HER FIRST BANKRUPTCY PETITION**

19          The automatic stay is "automatic" because it arises by operation of law upon the filing of  
20          a debtor's initiation bankruptcy petition. No court order is required to activate the stay. 11  
21          U.S.C. section 362(a); *In re Mellor*, 734 F.2d 1396, 198 (9<sup>th</sup> Cir. 1984); *In re Aldrich*, 34 B.R.  
22          776, 779 (9<sup>th</sup> Cir. BAP 1983). Indeed, in *In Re Aldrich*, the Ninth Circuit BAP ruled that "11  
23          U.S.C. § 362 automatically provides the debtor with a broad temporary stay or injunction against  
24          certain actions by creditors against the debtor." *In re Aldrich*, 34 B.R. 776, 779 (9<sup>th</sup> Cir. BAP  
25          1983.

26  
27          In the instant motion, the Movant claims that they are entitled to an order from this Court  
28          ruling that they may proceed with an eviction dispossessing Plaintiff from her home. It is a

1 fundamental rule of federal bankruptcy law that “bankruptcy decisions must be supported by  
2 admissible evidence.” *In Re Hudson*, 504 B.R. 569, 574 (9<sup>th</sup> Cir. BAP 2014). However, the  
3 Movant has provided not a shred of admissible evidence for this Court to make the determination  
4 that the foreclosure sale, upon which they base their claim for possession, did conclude prior to  
5 the first bankruptcy petition filed by the Debtor and there is presently a serious question over  
6 whether that is, in fact, this case. Based upon the record before this Court, the Court should deny  
7 the motion.  
8

9       The salient facts follow. The Debtor acquired title to this property following the death of  
10 both of her parents in June 2013. The Debtor made payments to the servicer on the mortgage,  
11 Central Mortgage, from July to September 2013. Towards the end of 2013, the Debtor spoke  
12 with Central Mortgage and informed them that she had obtained title to the property, and  
13 subsequently sent them the living trust documents.  
14

15       Thereafter, the Debtor engaged in a plethora of fruitless efforts to attempt to obtain a loan  
16 modification which are discussed in detail in her declaration. She was denied for a loan  
17 modification by Central Mortgage on the basis of insufficient income, even though the gross  
18 income calculation utilized by Central Mortgage was incorrect. Thereafter, the Debtor attempted  
19 to appeal Central Mortgage’s decision, but Central Mortgage denied her appeal on the basis that  
20 she did not provide documentation supporting her income even though she had.  
21  
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23       Turning to the most relevant facts of this motion, Movant claims that the sale occurred on  
24 September 12, 2014. On that same day, the Movant filed a voluntary chapter 13 bankruptcy  
25 petition at approximately 1:49 p.m, Northern District of California Bankruptcy Case No. 14-  
26 31336 The Movant does not state the time that the sale occurred. As stated in her declaration,  
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28

1 the Debtor has contacted the trustee who conducted the sale, and they have informed the Debtor  
2 that they do not know when the sale occurred either.

3  
4 In support of their motion, the *only* evidence proffered by the Movant is its counsel's  
5 declaration. Its counsel has no personal, first-hand knowledge of the timing of the foreclosure  
6 sale, nor does Movant's counsel claim to do so in her declaration.

7  
8 Thus, at present, there is a serious factual question over whether the Movant conducted  
9 the foreclosure sale prior to the Debtor filing her first bankruptcy petition. If the foreclosure sale  
10 was conducted after the Debtor first filed for bankruptcy, the foreclosure sale is *void ab*  
11 *initio*. *In Re Mitchell*, 279 B.R. 839, 842 (9th Cir. BAP 2007); *Schwartz v. United States (In re*  
12 *Schwartz)*, 954 F.2d 569, 571 (9th Cir.1992).

13  
14 Moreover, there is directly, on-point Ninth Circuit Bankruptcy Appellate panel that  
15 mandates that this Court find that there is insufficient evidence before the Court to determine that  
16 the Movant has met its burden that it is entitled to relief from automatic stay. In *In Re Hudson*,  
17 the Debtor filed a voluntary Chapter 13 bankruptcy petition at 10:28 a.m. in the Central District  
18 of California. *In re Hudson*, 504 B.R. 569, 571 (2014). A third party purchaser claimed to have  
19 purchased the Debtor's home at 10:01 a.m. *Id.* A Trustee's Deed Upon Sale was subsequently  
20 issued, as was a Notice to Quit. *Id.* When the Debtor failed to vacate the premises, the  
21 purchaser filed an unlawful detainer complaint in state court. *Id.*

22  
23 The purchaser then filed a motion for relief from stay in order to continue with their  
24 unlawful detainer action. *Id.* at 572. In said motion, the purchaser moved for relief from stay on  
25 the basis that they had purchased the property prior to the petition being filed and also requested  
26 that the Court annul the automatic stay "retroactive to the petition date to avoid having to re-file  
27  
28

1 the unlawful detainer action.” *Id.* In support of this motion, the Purchaser attached a declaration  
2 of its property manager. *Id.*

3  
4 The property manager averred that the sale occurred prior to the petition being filed, and  
5 the Central District of California Bankruptcy Court agreed. However, the property manager did  
6 not state that he had personal knowledge of the business records of the auctioneer that conducted  
7 the sale or that the document that purported to establish the time of the sale was kept within the  
8 regular course of business. *Id.* at 576. Thus, on appeal, the Ninth Circuit Bankruptcy Appellate  
9 Panel reversed and found that, since no proper foundation had been laid to introduce evidence as  
10 to the time of the foreclosure sale, the order granting the Movant’s motion for relief from stay  
11 must be reversed. *Id.* at 577.  
12

13 Here, the Movant has provided *no* evidence of the timing of the sale. The only evidence  
14 of the foreclosure sale whatsoever is its counsel’s declaration that it occurred “pre-petition”,  
15 which presumably refers to the filing of the instant petition, and not the first bankruptcy filing  
16 mentioned herein. In addition, even if Movant’s counsel meant to refer to the first bankruptcy  
17 filing, she has no personal knowledge of when the sale occurred and does not even claim to.  
18

19  
20 Consequently, the Court should deny the instant motion.

21 Respectfully Submitted,  
22

23 Dated: May 13, 2015  
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25 /s/ Nelson W. Goodell

26 Attorney for Debtor, ANGELIA GREEN  
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